OPENING STATEMENT OF
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SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE,
AND GOVERNMENT SPONSORED ENTERPRISES

THE SEC'S MARKET STRUCTURE PROPOSAL:
WILL IT ENHANCE COMPETITION?

TUESDAY, FEBRUARY 15, 2005

Mr. Chairman, today we meet for the fifth time in the last sixteen months to evaluate the need for further reforms in the organization of our capital markets. The ongoing deliberations over the National Market System have engendered strong emotions and considerable debate.

As I have regularly observed at our previous hearings, a variety of agents in our equities markets have questioned one or more aspects of the regulatory system during the last several years. Technological advances and competitive developments have also led us to a crossroads in the securities industry, forcing us to confront a number of decisions that could fundamentally alter its organization for many years to come.

One year ago, the Securities and Exchange Commission put forward four interrelated proposals to reshape the structure and operations of our equities markets. After reviewing the comments that it received regarding these matters, the Commission made a number of striking changes to its original plan and republished them for comment this past December.

Mr. Chairman, as you already know, I have made investor protection one of my highest priorities for my work on this Committee. It is therefore my very strong expectation that the Commission, first and foremost, will ensure that it protects the interests of average American investors in any decision it finally reaches regarding the future of the National Market System.

Given my interest in protecting retail investors, I was very pleased that the Commission decided to retain the trade-through rule when issuing its latest regulatory proposal. As one of the foundations of our National Market System, this regulation has ensured that all investors get the best price that our securities markets have to offer regardless of the location of a transaction. The approval of an opt-out provision for the trade-through rule would have likely splintered our securities markets, decreased liquidity, limited price discovery, and damaged our economy.

Today, I also suspect that many of our witnesses will focus on the Commission's newest proposal to alter the trade-through rule. In addition to applying the trade-through rule to all securities marketplaces, the Commission's latest plan for updating the National Market System includes two alternatives for implementation: the Market Best Bid or Offer Alternative and the Voluntary Depth Alternative.

Although some of our witnesses may disagree, the former approach, in my view, is the one that the Commission should choose as it better protects investors, fosters competition between and within markets, and incentivizes markets to attract the most aggressive orders. Also, the Voluntary Depth Alternative seems inconsistent with the goals of the National Market System in that it would undercut efforts to promote robust competition between markets.

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Moreover, the Voluntary Depth Alternative would almost certainly result in only one way for markets to differentiate themselves -- namely, how much they are willing to pay other market participants for their order flow. In my view, promoting competition based on payment for order flow will prove detrimental in the long term to average retail investors because of the conflicts of interest it creates. This issue is one that the Commission should carefully study and one that I hope our panelists will address in their comments and answers today.

Ultimately, the Commission can best ensure that investors obtain the best price by balancing competition between markets with protection of the best prices in each marketplace. From my perspective, the incremental approach contained in the Market Best Bid or Offer Alternative is preferable. The adoption of this alternative will also help to ensure that the United States maintains its global leadership in our financial markets.

In closing, Mr. Chairman, it is appropriate for our panel to conduct continued oversight on these complex issues. The observations of today's witnesses about these matters will further help me to discern how we can maintain the efficiency, effectiveness and competitiveness of our Nation's capital markets for many years to come.